

DEPARTMENT OF TRANSPORTATION

DIVISION OF LOCAL ASSISTANCE – M.S. 1

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February 8, 2006

To: Metropolitan Planning Organizations
Regional Transportation Planning Agencies
Local Transportation Commissions
League of California Cities

Dear Executive Director:

This letter is applicable to all agencies that have federal-aid projects. By letter dated December 30, 2005, the California Department of Transportation (Department) advised you that the Department is required, by a recent decision of the Ninth Circuit Court of Appeals, to consider amending its current Disadvantaged Business Enterprise (DBE) program and that the Department has begun the 45-day public comment period to do so. See the following Local Assistance website under "Helpful Information and Resources" for the December 30, 2005 letter, and the "Public Notice" initiating the 45-day public comment period:

(Later changed to 90-day) public comment period

http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#DBE

The public comment period, scheduled to end on February 3, 2006, has been extended an additional 45 days to March 20, 2006 for submission of public comments. The "Public Notice" of the 45-day extension is also on the above Local Assistance website. The Department's Office of Civil Rights anticipates it will take approximately 30 days to evaluate comments and information received. It is estimated that on May 1, 2006, a final decision will be made whether to continue either with a race-conscious DBE program or to change to a race-neutral DBE program.

At the time the Department makes its decision to either continue using a race-conscious DBE goal or to change to a race-neutral DBE goal, an announcement will be placed on the Local Assistance DBE website under "Helpful Information and Resources".

If the Department's decision were to continue with a race-conscious DBE program, there would be no immediate change to the way local agencies are presently administering federal-aid projects.

If the Department's decision is to change to a race-neutral DBE program, local agencies must also change to a race-neutral DBE program immediately to maintain federal fund eligibility and shall observe the following:

- Immediately implement the statewide race-neutral DBE program prepared by the Department. Local agencies will not be permitted to continue with their own separate DBE programs unless such programs have been approved directly by a federal agency.

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Local agencies are not required by the Department to initiate a 45-day public comment period to effect this change.

- No longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals. Subsequent federal-aid procurements shall contain race-neutral DBE contract language and availability goal.
- Re-advertise with the race-neutral contract language, all federal-aid contracts with race-conscious DBE goals, which have had bids opened or proposals received but contract award documents not yet fully executed. A contract change order or contract amendment to change from a race-conscious to a race-neutral DBE goal is not acceptable.
- Federal-aid contracts that have been advertised, but for which bids have not yet been opened or proposals received, may proceed with an addendum changing the contract provisions from race-conscious to race-neutral.
- If full execution of the contract award documents has occurred prior to the Department's change to a race-neutral program, federal-aid contracts with race-conscious DBE goals will continue unchanged and not be affected.
- Local agencies will continue to collect and report anticipated DBE participation at award, and final utilization at completion of all federal-aid contracts.

Executing the award of a contract with a race-conscious DBE goal after the Department has changed to a race-neutral DBE program will make a contract ineligible for federal-aid funding.

The above information is being provided to ensure that agencies are fully informed, and to mitigate and minimize disruption and delays to local agency federal-aid procurements caused by a shift from a race-conscious DBE program to a race-neutral DBE program. It is recommended that local agencies review their planned advertisements, bid openings and contract execution dates, and consider scheduling or extending bid openings a week or two after the May 1st timeframe. This would allow for extending bid openings and including the new race-neutral specifications by addendums, if required.

To help prepare local agencies should the change to race-neutral occur, the Department is taking the following actions to prepare race-neutral contract documents:

- Preparing race-neutral "Sample Notice to Contractors Special Provisions" and the "Sample Proposal and Contract" for use in federal-aid construction contracts. Both will be available shortly for local agencies to download from the Division of Local Assistance website at:

http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm

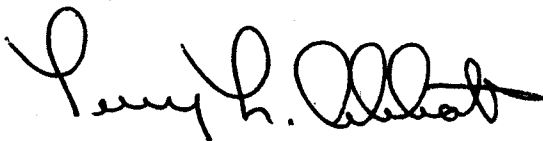
- Preparing race neutral "Bidder/Proposer DBE Participation Requirements and Instructions" (Exhibit 10-I), and the "Sample DBE Participation Requirements" (Exhibit 10-J), in Chapter 10, "Consultant Selection," of the Local Assistance Procedures Manual for use in federal-aid consultant contracts. Both will be available shortly for agencies to download from the Division of Local Assistance website under "Announcements" at:

<http://www.dot.ca.gov/hq/LocalPrograms/>

- A copy of the Department's race-neutral statewide DBE program will be made available in the near future for local agencies to download for information and use under "Announcements" at the Division of Local Assistance website.

I want each agency to know that the Department is very concerned about the potential delays and effects to local agency projects should there be a change to a race-neutral DBE program. Through advance communication with each of you, my goal is to minimize the disruption to project delivery. I encourage each agency to maintain contact with their District Local Assistance Engineer (DLAE) and bring to the DLAE's attention any questions or special circumstances that need to be quickly addressed by the Department. DBE informational meetings will be held in your area by the Department to answer questions and further assist local agencies with their federal-aid projects. You will be contacted by your DLAE in the near future as to the date and location of these meetings.

Sincerely,



TERRY L. ABBOTT
Chief
Division of Local Assistance

c: DLAEs